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# PAPERS

RELATING TO THE

NORTH EASTERN BOUNDARY.

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256

1839

(88)

**Commonwealth of Massachusetts.**

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IN THE HOUSE OF REPRESENTATIVES, March 4, 1839.

*Ordered*, That the Committee on Public Lands be instructed to cause to be printed forthwith, for the use of the Legislature, the President's late communications to Congress, on the subject of the Northeastern Boundary; the Reports of the Committees of Foreign Relations thereon, and the Memorandum of Agreement entered into by Mr. Forsyth, Secretary of State, and Mr. Fox, the British Minister, on the same subject. Also, the Report on the same, made in the Senate of the United States, July 4, 1838.

Sent up for concurrence.

L. S. CUSHING, *Clerk*.

SENATE, March 4, 1839.

Concurred.

CHARLES CALHOUN, *Clerk*.

**Commonwealth of Massachusetts.**

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IN SENATE, March 5, 1839.

The Committee on Public Lands, to whom was referred an order of March 4, directing "the President's late communications to Congress on the subject of the Northeastern Boundary; the Reports of the Committees of Foreign Relations thereon; the Memorandum of Agreement entered into by Mr. Forsyth, Secretary of State, and Mr. Fox, the British Minister, on the subject; also the Report on the same, made in the Senate of the United States, July, 1838," to be printed forthwith for the use of the Legislature, report the same.

Per order,

S. G. GOODRICH, *Chairman.*

## MESSAGE FROM THE PRESIDENT.

*To the Senate of the United States,  
and House of Representatives :*

I lay before Congress several despatches from his Excellency the Governor of Maine, with the enclosures, communicating certain proceedings of the Legislature of that State, and a copy of the reply of the Secretary of State, made by my direction, together with a note from H. S. Fox, Esq., Envoy Extraordinary and Minister Plenipotentiary of Great Britain, with the answer of the Secretary of State to the same.

It appears from the documents that a numerous band of lawless and desperate men, chiefly from the adjoining British Provinces, but without the authority or sanction of the Provincial Government, had trespassed upon that portion of the territory in dispute between the United States and Great Britain, which is watered by the river Aroostook, and claimed to belong to the State of Maine ; and that they had committed extensive depredations there by cutting and destroying a large quantity of timber. It will further appear that the Governor of Maine, having been officially apprised of the circumstance, had communicated it to the Legislature, with a recommendation of such provisions, in addition to those already existing by law, as would enable him to arrest the trespassers, and secure the timber which they were about carrying away ; that in compliance with a resolve of the Legislature, passed in pursuance of his recommendation, his Excellency had despatched the land agent of the State, with a force deemed adequate to that purpose, to the scene of the alleged depredations, who, after accomplishing a part of his duty, was seized by a band of the trespassers, at a house claimed to be within the jurisdiction of Maine, whither he had repaired for the purpose of meeting and consulting with the land agent of the Province of New Brunswick, and conveyed as a prisoner to Frederickton, in that Province, together with two other citizens of the State, who were assisting him in the discharge of his duty.

It will also appear that the Governor and Legislature of Maine, satisfied that the trespassers had acted in defiance of the laws of both countries, learning that they were in possession of arms, and anticipating (correctly as the result has proved) that persons of their reckless and desperate character would set at nought the authority of the magistrates, without the aid of a strong force, had authorized the sheriff, and the officer appointed, in the place of the land agent, to employ, at the expense of the State, an armed posse, who had proceeded to the scene of the depredations, with a view to the entire dispersion or arrest of the trespassers, and the protection of the public property.

In the correspondence between the Governor of Maine and Sir John Harvey, Lieutenant Governor of the Province of New Brunswick, which has grown out of these occurrences, and is likewise herewith communicated, the former is requested to recall the armed party advanced into the disputed territory for the arrest of trespassers, and is informed that a strong body of British troops is to be held in readiness to support and protect the authority and subjects of Great Britain in said territory. In answer to that request the Provincial Governor is informed of the determination of the State of Maine to support the land agent and his party in the performance of their duty, and the same determination, for the execution of which provision is made by a resolution of the State Legislature, is communicated by the Governor to the General Government.

The Lieutenant Governor of New Brunswick, in calling upon the Governor of Maine for the recall of the land agent and his party from the disputed territory, and the British Minister in making a similar demand upon the government of the United States, proceed from the assumption that an agreement exists between the two nations, conceding to Great Britain, until the final settlement of the boundary question, exclusive possession of, and jurisdiction over, the territory in dispute. The important bearing which such an agreement, if it existed, would have upon the condition and interests of the parties, and the influence it might have upon the adjustment of the dispute, are too obvious to allow the error upon which this assumption seems to rest, to pass for a moment without correction. The answer of the Secretary of State to Mr. Fox's note, will show the ground taken by the government of the United States on this point. It is believed that all the correspondence which has passed between the two governments upon this subject, has already been communicated to Congress, and is now on their files. An abstract of it, however, hastily prepared, accompanies this communica-

tion. It is possible that in thus abridging a voluminous correspondence, commencing in 1825, and continuing to a very recent period, a portion may have been accidentally overlooked; but it is believed that nothing has taken place which would materially change the aspect of the question as therein presented. Instead of sustaining the assumption of the British functionaries, that correspondence disproves the existence of any such agreement.

It shows that the two governments have differed not only in regard to the main question of title to the territory in dispute, but with reference also to the right of jurisdiction, and the fact of the actual exercise of it in different portions thereof. Always aiming at an amicable adjustment of the dispute, both parties have entertained and repeatedly urged upon each other a desire, that each should exercise its rights, whatever it considered them to be, in such a manner as to avoid collision, and allay, to the greatest possible extent, the excitement likely to grow out of the controversy. It was in pursuance of such an understanding, that Maine and Massachusetts, upon the remonstrance of Great Britain, desisted from making sales of lands, and the general government from the construction of a projected military road in a portion of the territory of which they claimed to have enjoyed the exclusive possession; and that Great Britain, on her part, in deference to a similar remonstrance from the United States, suspended the issue of licenses to cut timber in the territory in controversy, and also the survey and location of a rail-road through a section of country over which she also claimed to have exercised exclusive jurisdiction.

The State of Maine, had a right to arrest the depredations complained of; it belonged to her to judge of the exigency of the occasion calling for her interference; and it is presumed that, had the Lieutenant Governor of New Brunswick been correctly advised of the nature of the proceedings of the State of Maine, he would not have regarded the transaction as requiring, on his part, any resort to force. Each party claiming a right to the territory, and hence to the exclusive jurisdiction over it, it is manifest that, to prevent the destruction of the timber by trespassers, acting against the authority of both, and at the same time avoid forcible collision between the contiguous Governments during the pendency of negotiations concerning the title, resort must be had to the mutual exercise of jurisdiction in such extreme cases, or to an amicable and temporary arrangement as to the limits within which it should be exercised by each party. The understanding supposed to exist between the United States and Great Britain has been found



heretofore sufficient for that purpose, and I believe it will prove so hereafter, if the parties on the frontier, directly interested in the question, are respectively governed by a just spirit of reconciliation and forbearance.

If it shall be found, as there is now reason to apprehend, that there is, in the modes of construing that understanding by the two governments, a difference not to be reconciled, I shall not hesitate to propose to her Britannic Majesty's Government, a distinct arrangement for the temporary and mutual exercise of jurisdiction, by means of which similar difficulties may in future be prevented.

But between an effort on the part of Maine to preserve the property in dispute from destruction by intruders, and a military occupation by that State of the territory, with a view to hold it by force, while the settlement is a subject of negotiation between the two Governments, there is an essential difference, as well in respect to the position of the State, as to the duties of the general Government. In a letter addressed by the Secretary of State to the Governor of Maine, on the first of March last, giving a detailed statement of the steps which had been taken by the Federal Government to bring the controversy to a termination, and designed to apprise the Governor of that State of the views of the Federal Executive, in respect to the future, it was stated, that while the obligations of the Federal Government to do all in its power to effect the settlement of the boundary question were fully recognised, it had, in the event of being unable to do so specifically, by mutual consent, no other means to accomplish that object amicably, than by another arbitration, or by a commission with an umpire in the nature of an arbitration; and that in the event of all other measures failing, the President would feel it his duty to submit another proposition to the Government of Great Britain, to refer the decision of the question to a third power. These are still my views upon the subject, and until this step shall have been taken, I cannot think it proper to invoke the attention of Congress to other than amicable means for the settlement of the controversy, or to cause the military power of the Federal Government to be brought in aid of the State of Maine, in any attempt to effect that object by a resort to force.

On the other hand, if the authorities of New Brunswick should attempt to enforce the claim of exclusive jurisdiction set up by them, by means of a military occupation on their part of the disputed territory, I shall feel myself bound to consider the contingency provided by the Constitution as having occurred, on the happening of which a State

has the right to call for the aid of the Federal Government to repel invasion.

I have expressed to the British Minister near this Government a confident expectation that the agents of the State of Maine, who have been arrested under an obvious misapprehension of the object of their mission, will be promptly released; and to the Governor of Maine that a similar course will be pursued in regard to the agents of the Province of New Brunswick. I have also recommended that any militia that may have been brought together by the State of Maine, from an apprehension of a collision with the Government or people of the British Province, will be voluntarily and peaceably disbanded.

I cannot allow myself to doubt that the results anticipated from these representations will be seasonably realized. The parties more immediately interested cannot but perceive that an appeal to arms, under existing circumstances, will not only prove fatal to their present interests, but would postpone, if not defeat, the attainment of the main objects which they have in view. The very incidents which have recently occurred will necessarily awaken the Governments to the importance of promptly adjusting a dispute, by which it is now made manifest that the peace of the two nations is daily and imminently endangered. This expectation is further warranted by the general forbearance which has hitherto characterized the conduct of the Government and people on both sides of the line. In the uniform patriotism of Maine, her attachment to the Union, her respect for the wishes of the people of her sister states, of whose interest in her welfare she cannot be unconscious, and, in the solicitude felt by the country at large for the preservation of peace with our neighbors, we have a strong guarantee that she will not disregard the request that has been made of her.

As, however, the session of Congress is about to terminate, and the agency of the Executive may become necessary during the recess, it is important that the attention of the Legislature should be drawn to the consideration of such measures as may be calculated to obviate the necessity of a call for an extra session. With that view, I have thought it my duty to lay the whole matter before you, and to invite such action thereon as you may think the occasion requires.

M. VAN BUREN.

WASHINGTON, 26th February, 1839.

The Committee on Foreign Relations, to which was referred the Messages of the President of the United States of the 26th and the 27th inst. and the accompanying documents, in relation to the existing difficulties on the North-eastern frontier of the United States, report the following resolutions, and recommend their adoption by the Senate :

*Resolved*, That the Senate can discover no trace, throughout the long correspondence which has been submitted to them, between the Governments of Great Britain and the United States, of any understanding, express or implied, much less of any "explicit agreement," such as is now alleged, that the territory in dispute between them on the North-eastern boundary of the latter, shall be placed and remain under the exclusive jurisdiction of Her Britannic Majesty's Government until the settlement of the question ; on the contrary, it appears that there was, and is, a clear subsisting understanding between the parties, under which they have both acted, that, until this question shall be finally determined, each of them shall refrain from the exercise of jurisdiction over any portion of the disputed territory, except such parts of it as may have been in the actual possession of the one or the other party.

*Resolved*, That whilst the United States are bound, in good faith, to comply with this understanding, during the pendency of negotiations, the Senate cannot perceive that the State of Maine has violated the spirit of it by merely sending under the authority of the Legislature, her land agent, with a sufficient force, into the disputed territory, for the sole purpose of expelling lawless trespassers engaged in impairing its value by cutting down the timber ; both parties having a common right, and being bound by common duty, to expel such intruders from a territory to which each claims title, taking care, however, to retire within their acknowledged limits when this single object shall have been accomplished.

*Resolved*, That should Her Britannic Majesty's Government in violation of the clear understanding between the parties, persist in carrying its avowed determination into execution, and attempt, by military force, to assume exclusive jurisdiction over the disputed territory, all of which, they firmly believe, rightfully belongs to the State of Maine,

the exigency, in the opinion of the Senate, will then have occurred, rendering it the imperative duty of the President, under the Constitution and the laws, to call forth the militia, and employ the military force of the United States, for the purpose of repelling such an invasion. And in this event, the Senate will cordially co-operate with and sustain the President in defending the rights of the country.

*Resolved*, 'That should the British authorities refrain from attempting a military occupation of the territory in dispute, and from enforcing their claim to exclusive jurisdiction over it by arms, that then, in the opinion of the Senate, the State of Maine ought, on her part, to pursue a course of similar forbearance. And should she refuse to do so, and determine to settle the controversy for herself by force, the adjustment of which is entrusted under the Constitution to the Federal Government, in such an event there will be no obligation imposed on that Government to sustain her by military aid.

The report was ordered to be printed, and made the special order for to-morrow.

## THE BOUNDARY TROUBLES.

The following is the Report made to the House of Representatives on Thursday, February 2, by Mr. HOWARD, Chairman of the Committee on Foreign Relations :

The Committee on Foreign Affairs, to which has been referred two messages from the President of the United States, enclosing sundry papers relating to the disturbances upon the Aroostook river, in the State of Maine, report :

That they have examined the papers submitted to them by the House with great care, and will offer such reflections upon them as the limited time for the preparation of this report will admit. The very near approach of the termination of the present Congress, and the desire of the Committee that as much time as possible should be afforded to the House for the examination of the bill herewith reported, are considerations of such a powerful nature, that some incidental matters, connected with the subject, cannot be fully investigated. The main points, however, of the controversy, are not numerous, and upon them the opinion of the Committee is clear and decided. The position assumed by the President in his message, is correct, and ought to be sustained, if necessary, by the legislative power of Congress.

It is well known that an informal arrangement or understanding has existed for many years past, between the United States and Great Britain, relating to the territory in dispute between them, and having for its object the avoidance of clashing authorities, calculated to endanger the peace of the two nations.

The Committee have not time to give a detailed and historical statement of the origin and progress of this arrangement, the examination of which might perhaps elucidate the cause of the strange error into which the British Government is represented, by its agents in this country, to have fallen with respect to its provisions. Suffice it to say, that it never appears to have gone further, in its greatest extent, than to adopt the basis of the "*uti possidetis*," leaving each party to the continued exercise of the jurisdiction which it had previously maintained in practice. The idea which is occasionally suggested in some of the British documents, that, prior to the peace of 1783, the Government of Great Britain was in possession of the whole country, and,

therefore, that this constructive possession must be considered as continuing until she is divested of it with her own consent, is one which the United States can never sanction, or even listen to, without strong repugnance. It implies that the people of the United States hold their country by a grant from the British Crown, made in the treaty of 1783—a doctrine which was successfully resisted by the ministers of the United States, even when it was advanced by remote implication, prior to the signature of that treaty by their refusing to treat with the British ministers until their credentials were changed. At a subsequent period of our history, the same doctrine was advanced in argument; and at that period, also, was, as it must ever be, met with instant contradiction. The people of the United States hold their country by virtue of the declaration of the 4th July, 1776; and the treaty of 1783 did nothing more than arrange the boundary lines between the two nations, independent of each other in fact and in right. So far, therefore, as the claim of Great Britain to the jurisdiction over the unsettled parts of Maine is founded upon the twice exploded theory that she is the rightful sovereign of all that she has not granted away, it cannot be submitted to without sacrifices of honor, which the American nation never will make.

When the discussion became active between the two Governments, as to their respective rights to the territory now in dispute, the greater part of it was, and indeed still remains, uninhabited by permanent settlers. Here and there a small settlement could be found, consisting in some cases of a single house, and in others of more than one, placed near each other for the convenience of the inhabitants. The extent of the arrangement between the two Governments does not appear, as construed by the American Government, to have gone further than the recognition of the jurisdiction of each over the people and lands then operated upon by it. If these inhabitants had taken out the titles to their lands from either one Government or the other, and were in the habit of resorting to its judicial authority for the preservation of order, then they were to continue so to do until the question of ultimate ownership should be finally decided in some mode satisfactory to both Governments. The propriety of this arrangement will not be questioned by the Committee. If it left to the British Government the jurisdiction over the inhabitants, along the military road which leads from Halifax to Quebec, and thereby furnished it with a motive for procrastinating the controversy, inasmuch as it continued in the enjoyment of nearly all that rendered the country valuable as a British pos-

session, it also furnished a strong proof of the desire of the American Government to deal fairly and liberally with its antagonist in the argument. Demonstrating, in this conclusive manner, that it was not influenced by a captious spirit of discontent, the Government of the United States derived from this state of the case a right to appeal to the British Government, to expedite the final adjustment of the controversy, and to claim, in the mean time, the full benefit, on its part, of an arrangement which, perhaps, gave to its adversary more than an equal share of advantages. But the arrangement has been entirely misunderstood or misconstrued, if the Lieutenant Governor of New Brunswick be correct in his exposition of the orders under which he is acting.

The United States never did, and never can, consent that the exclusive jurisdiction of the whole territory in dispute shall be consigned to the care of any officer of the British Government. The pretension now advanced is as unreasonable in itself as it is unsustained by any agreement between the two Governments. Supposing that the parties to the controversy stand upon an equal footing as to their rights, (and there is none other in the case, except the inadmissible one formerly alluded to), the United States have as much reason to expect that Great Britain will yield to them the exclusive jurisdiction of the whole of the contested territory, together with the care and custody of the timber and other public property, as she has to require from us such an extravagant concession. On the part of the United States, it has never been claimed or asked, as far as the Committee are informed; and the true position of the President now is, that he resists the application of a principle, which no Executive of this country ever adopted as his guide. It has not been asked of Great Britain nor can it be submitted to from her. What the United States ask from others, they are always willing to grant, nor can they grant what it would be deemed unreasonable to ask.

That portion of the territory in which the recent and present disturbances exist, has been, for a number of years past, subject to the laws of Maine, and, before the separation of Maine from Massachusetts, was under the control of the latter. In December, 1807, Massachusetts conveyed one township, lying on both sides of the Aroostook, and near the meridian line from the source of the St. Croix, according to a selection, survey, and plan made under a resolve passed in March, 1806. In January, 1808, she conveyed ten thousand acres, lying west of the aforesaid township, and on both sides of the Aroostook, pursu-

ant to a survey and plan made under the same resolve. This jurisdiction has been continued, through the medium of land agents, ever since that time; and the settlers, who have been there for a number of years past, (certainly since 1822,) have always, in practice, held their property under grants from Massachusetts and Maine.

The part remaining unsettled has been applied to no other useful purpose than to use the timber, in which it is very productive; and the State of Massachusetts has been in the practice of granting licenses to her people to cut timber from the public domain. The exercise of jurisdiction was as perfect as the nature of the country would permit. The mere fact of granting licenses to cut timber to certain individuals shows that the preservation of the timber was held to be an object of great consequence, and drew after it the incidental right of refusing to permit the timber to be cut down, whenever it was thought wise to do so; or of taking other measures for its preservation, by driving off trespassers, or punishing them by civil process. This right Maine derived from Massachusetts. Every State Government in the Union has a right to regulate the landed interest, whether public or private, within its limits; and Maine stands upon the same footing, unless as to such parts of it as are decided not to be under its jurisdiction by the exercise of the constitutional powers of the Federal Government. But, as has been already observed, no proceeding or agreement of the Federal Government can be found which did not recognise an actual jurisdiction, just such as that now claimed and enforced by Maine. Whether the Legislature of that State ought or ought not in courtesy to the Federal Government, to have invoked its interposition before driving off the trespassers with a strong hand, is a question which the Committee deem it unnecessary to examine; because the pretensions advanced by the Lieutenant Governor of New Brunswick equally exclude the right of the United States and Maine to interfere. If the United States had been applied to, and the urgency of the case had rendered a prompt and forcible interposition necessary to remove those lawless trespassers who were equally the enemies of both Governments, the same opposition would have been made to such interference by the Lieutenant Governor of New Brunswick, and the same question arisen as in the present case.

The conflicting claims of Great Britain and the United States are now presented in antagonistical positions to each other, and the subordinate question as to the manner in which they have thus been brought in direct opposition is not of sufficient importance to require strict



examination. If it were, it might be argued that the conduct of the Lieutenant Governor of New Brunswick in directing a boom to be placed across the mouth of the Aroostook river, for the purpose of intercepting, seizing, and selling the timber which has been cut, is no sufficient satisfaction to the State of Maine, which may desire to preserve its own timber, whilst it argues such remissness on the part of the British authorities, over their own people, as might well have induced the State of Maine to enforce her own laws. If the Committee are right in the view which they have taken of the arrangement between the United States and Great Britain, there is nothing in it to impair, but, on the contrary, every thing to ratify the jurisdiction of Maine over that part of her territory where it had long been familiar, and the interference of the Lieutenant Governor of New Brunswick is a violation of the existing understanding. In the first proceeding of Maine the force sent to arrest and drive off the numerous and armed band of trespassers who were depredating upon the public property, appears to have been in the nature of a civil process, in execution of the law of the land. The power of a ministerial officer, such as a sheriff, for example, to compel obedience to the law, and to summon to his aid a sufficient portion of the "power of the country" to subdue opposition, is well known both to American and British jurisprudence, and is sanctioned by early laws in the history of England. The riotous and desperate character of the marauders upon the Aroostook, is sufficiently manifested by the fact of their breaking open an arsenal upon the British territory, in order to supply themselves with an additional quantity of arms, to enable themselves to resist and repel the party which was approaching, under a civil officer, to require submission to the laws.

The proclamation of the Lieutenant Governor of New Brunswick was issued before any steps were taken by Maine to sustain the civil by the military power, and was directed against the interference of the ministerial officer of the law, acting in strict conformity with what are believed to be fundamental principles of British as well as American law. The first appeal to military force was made by him, and the subsequent proceedings of Maine are defensive merely. The pretension of the Lieutenant Governor of New Brunswick excludes the civil as well as military power of Maine and the United States from interfering to preserve order in this seat of the ancient jurisdiction of Massachusetts; and would compel the United States and Maine to rely upon the justice, the vigilance, or the generosity of the British authorities for

the maintenance of good order and the enforcement of the laws, in a country where nothing but a naked claim can be said to exist upon the part of the British Government. It demands of Maine that she should divest herself of a jurisdiction practically established and ascertained, and transfer it to Great Britain. It demands of the United States that an arrangement, alleged to have been made between the two Governments, of the existence of which the United States are unconscious, should be summarily carried out, according to the construction which one of the parties is said to have placed upon it, and without giving to the other party an opportunity to contest such construction. It is difficult, in the opinion of the Committee, to believe that the Government of Great Britain maintains such an interpretation of that arrangement, and thus converts what was intended for the preservation of friendly feelings into a source of great and instant discord. But the assertion of the Lieutenant Governor of New Brunswick has been twice officially, deliberately, and publicly made, that he is acting under the instructions of his Government; a fact of which he and his Government can be the only judges. The execution of these orders is incompatible with the honor of the United States. The Executive branch of the Government has expressed this opinion, and in this opinion the Committee fully concur. The sudden execution of these orders may bring on a crisis for which as much preparation ought to be made as the short time remaining of the present session of Congress will permit; and the bill which is herewith submitted is intended to accomplish that purpose.

The Committee refer with much pleasure to the efforts which have been made by the British Minister at Washington, evidenced by the memorandum of a conference between him and the Secretary of the State, to avert the events which seem to be approaching. If the Lieutenant Governor of New Brunswick shall desist from any attempt to take or hold military possession of the whole of the disputed territory, it will be easy to restore things to their former condition. If he shall determine to suspend further movements until the decision of the British Government be known, it will be for that Government to say what shall be the political relations between the United States and Great Britain; whether the friendship which now so happily prevails between the two nations, for the preservation of which the essential interests of both loudly call, shall be suddenly and rudely broken by assuming a principle as a ground of action to which the United States cannot submit.

The Committee cannot but entertain the hope that no precipitate counsels on the part of the Lieutenant Governor of New Brunswick will deprive the Government of Great Britain of an opportunity of explaining, before any more serious difficulties shall have occurred, orders which he is believed to have misunderstood. In this event, all immediate difficulties will disappear. The insuperable objection to the military occupation of the disputed territory by Great Britain, requires, in common fairness, that no attempt of the kind should be made by Maine or the United States. Having accomplished her intention of driving off or arresting the trespassers upon the Aroostook, and thus enforcing her laws, Maine will, it is not to be doubted, be satisfied with this vindication of her sovereignty, and withdraw the military force which is now in arms to sustain the civil authority and repel invasion.

A contemporaneous cessation of measures by Maine and New Brunswick will compromise the honor of neither; and time will be thus afforded for the British Government to select the position which it intends to occupy in the relations between it and the United States. If any motive were necessary to induce Maine to adopt a course so manifestly proper, it would be found in the prompt response of the Executive of the United States to the appeal made to it at the present crisis, and the jealous sensibility which has been manifested for the protection of her rights, by spreading over them the ample powers of the Federal Union.

The Committee ought, perhaps, here to close this report. But the anxiety which they feel that no measure should be left unemployed to preserve peace between the United States and Great Britain, by removing, not only temporarily but permanently, the causes of discontent between them, induces them to offer another recommendation to the House. It is, the expression of an opinion by the House, sustained by a legislative provision, that a special embassy should be sent to England, for the purpose of co-operating with the resident minister there, in endeavoring to adjust this long pending controversy. The precedents for this measure in our history are numerous and encouraging.

The object of such an embassy is, to express a deep conviction on the part of the Government of the extreme urgency of the case, and the absolute necessity of adjusting existing difficulties. The ordinary forms of negotiation appear insufficient to rouse the British Government to the danger that the two nations may find themselves involved

in war, notwithstanding the desire of the Governments of both to avoid it; and the step proposed would manifest to the world, at all events, that the United States are sincerely anxious to exert every means in their power to maintain the most amicable relations with a government and people, so eminently entitled to the respect and regard of every civilized nation on the globe.

The Committee are conscious that some of the provisions of the bill herewith reported, would more properly have emanated from some of the other Committees of the House, upon whose jurisdiction they are reluctant to encroach; but the few days which remain of this session would not have permitted any delay, with a view of referring these subjects to other Committees, with the slightest hope of obtaining any action on the part of the House. They submit the whole matter, therefore, as the result of their anxious reflections, to the better judgment of the House.

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The following bill was also reported from the Committee on Foreign Relations:

#### A BILL

Giving to the President of the United States additional powers for the defence of the United States in cases, against invasion, and for other purposes.

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and he hereby is, authorized to resist any attempt on the part of Great Britain to enforce, by arms her claim to exclusive jurisdiction over that part of the State of Maine, which is in dispute between the United States and Great Britain; and, for that purpose, to employ the naval and military forces of the United States and such portions of the militia as he may deem it advisable to call into service.

*SEC. 2. And be it further enacted,* That in the event of actual invasion of the territory of the United States by any foreign Power, or of imminent danger of such invasion discovered, in his opinion, to exist, before Congress can be convened to act upon the subject, the President of the United States be, and he hereby is, authorized, in addition to the present military establishment of the United States, to

raise a provisional force, to be enlisted for five years, or during the continuance of hostilities with any foreign Power, not exceeding one regiment of dragoons, one regiment of artillery, two regiments of riflemen, and sixteen regiments of infantry, to be organized, in all respects, like the corresponding regiments now in service; and, also, to appoint not exceeding one major general, four brigadier generals, and not exceeding one surgeon and one assistant surgeon for each new regiment; the regiments, general, and medical officers to be subject to the same laws and rules, and to be entitled to the same benefits, of every kind, with the like corps and officers now in service; and it shall be the duty of the President to discharge the troops which may be raised by virtue of this act whenever the occasion for them, as defined by this act, shall cease to exist.

SEC. 3. *And be it further enacted*, That, in the event of either of the contingencies provided in the first section of this act, the President of the United States shall be authorized to complete the public armed vessels now authorized by law, and to equip, man, and employ, in actual service, all the naval force of the United States.

SEC. 4. *And be it further enacted*, That the sum of — millions of dollars is hereby appropriated and placed at his disposal for the purpose of executing the provisions of this act; to provide for which the Secretary of the Treasury is authorized to borrow money on the credit of the United States, and to cause to be issued certificates of stock, signed by the Register of the Treasury, for the sum to be borrowed, or any part thereof; and the same to be sold upon the best terms that may be offered, after public notice for proposals for the same: *Provided*, That no engagement or contract shall be entered into which shall preclude the United States from reimbursing any sum or sums thus borrowed after the expiration of five years from the first of January next; and that the rate of interest shall not exceed five per cent. payable semi-annually.

SEC. 5. *And be it further enacted*, That the sum of eighteen thousand dollars be, and the same is hereby appropriated, out of any money in the Treasury, not otherwise appropriated, for outfit and salary of a special minister to Great Britain: *Provided*, The President of the United States shall deem it expedient to appoint the same.

The Bill and Report were referred to the Committee of the whole on the state of the Union, and made the special order of the day for Friday at eleven o'clock.

WASHINGTON, Feb. 27, 1830.

*To the House of Representatives of the United States :*

I transmit to Congress copies of various other documents received from the Governor of Maine, relating to the dispute between that State and the province of New Brunswick, which formed the subject of my Message on the 26th inst. and also a copy of a memorandum signed by the Secretary of State of the United States and Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary near the United States, of the terms upon which it is believed all collision can be avoided on the frontier, consistently with, and respecting the claims on either side. As the British Minister acts without specific authority from his Government, it will be observed, that this memorandum has but the force of recommendation on the Provincial authorities and on the Government of the State.

M. VAN BUREN.

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MEMORANDUM.

Her Majesty's authorities consider it to have been understood and agreed upon by the two Governments that the territory in dispute between Great Britain and the United States, on the North eastern frontier, should remain exclusively under British jurisdiction until the final settlement of the boundary question.

The United States Government have not understood the above agreement in the same sense, but consider, on the contrary, that there has been no agreement whatever for the exercise, by Great Britain, of exclusive jurisdiction over the disputed territory, or any portion thereof, but a mutual understanding that, pending the negotiation, the jurisdiction then exercised by either party, over small portions of the territory in dispute, should not be enlarged, but be continued merely for the preservation of local tranquillity and the public property, both forbearing as far as practicable to exert any authority, and, when any should be exercised by either, placing upon the conduct of each the most favorable construction.

A complete understanding upon the question, thus placed at issue, of present jurisdiction, can only be arrived at by friendly discussion between the Governments of the United States and Great Britain; and, as it is confidently hoped that there will be an early settlement of the question, this subordinate point of distinction can be of but little moment.

In the mean time the Governor of the Province of New Brunswick and the Government of the State of Maine will act as follows: Her Majesty's officers will not seek to expel by military force the armed party which has been sent by Maine into the district bordering on the Aroostook river; but the Government of Maine will voluntarily, and without needless delay, withdraw beyond the bounds of the disputed territory any armed force now within them; and, if future necessity should arise for dispersing notorious trespassers, or protecting public property from depredation by armed force, the operation shall be conducted by concert, jointly or separately, according to agreements between the Governments of Maine and New Brunswick.

The civil officers in the service, respectively, of New Brunswick and Maine, who have been taken into custody by the opposite parties, shall be released.

Nothing in this memorandum shall be construed to fortify or to weaken in any respect whatever, the claim of either party to the ultimate possession of the disputed territory.

The Minister Plenipotentiary of Her Britannic Majesty having no specific authority to make any arrangement on the subject, the undersigned can only recommend, as they now earnestly do, to the Governments of New Brunswick and Maine, to regulate their future proceedings according to the terms hereinbefore set forth, until the final settlement of the territorial dispute, or until the Governments of the United States and Great Britain shall come to some definite conclusion on the subordinate point upon which they are now at issue.

JOHN FORSYTH,

*Secretary of State of the United States of North America.*

H. S. FOX,

*H. B. M. Envoy Extraordinary and Minister Plenipotentiary.*

WASHINGTON, Feb. 27, 1830.

## IN SENATE OF THE UNITED STATES.

JULY 4, 1838.

Submitted, and ordered to be printed, and that 20,000 additional copies be furnished for the use of the Senate

Mr. BUCHANAN submitted the following

## REPORT :

*The Committee on Foreign Relations, to which was referred the "bill to provide for surveying the north eastern boundary line of the United States, according to the provisions of the treaty of peace of seventeen hundred and eighty-three," have had the same under consideration, and now report :*

That the first section of this bill directs "the President of the United States to cause the boundary line between the United States and the adjacent British provinces, from the source of the St. Croix river directly north to the highlands which divide the waters that fall into the Atlantic ocean from those which fall into the river St. Lawrence, thence along said highlands from the northwest angle of Nova Scotia to the northwesternmost head of Connecticut river, as particularly defined in the treaty of peace concluded at Paris the third day of September, 1783, to be accurately surveyed and marked, and suitable monuments to be erected thereon, at such points as may be deemed necessary and important."

The second section provides for the appointment of a commissioner and surveyor by the President, by and with the advice and consent of the Senate, "who may employ such assistants, under the direction of the President, as shall be necessary, and who shall make an exact return of their proceedings to the President, with a correct map of the country over which said line passes, exhibiting the prominent points of its topography and the location of the marks and monuments by them made and erected."

The third and last section merely provides for the compensation of the commissioner and surveyor.



This bill, then, proposes that Congress shall create a commission, independently of Great Britain, to run and mark the north eastern boundary of the United States, conterminous with that of New Brunswick and Canada, provinces of the British empire. It asks no previous consent from Great Britain; it does not require that Great Britain should become a party to the survey; and yet that country has a common interest with the United States in the correct establishment of this boundary, according to the treaty. It would be premature and inexpedient, the Committee believe, to resort to such a course of separate action towards a neighboring and friendly power, between which and the United States there is a reciprocal desire to maintain the most friendly relations, until every other means of amicably adjusting the dispute shall be exhausted. Before the committee could recommend the adoption of such a measure to the Senate, they ought to be satisfied, beyond a reasonable doubt, first, that the United States have a clear title to the disputed territory which would be embraced within their limits by the proposed survey; and, secondly, that no other and more friendly expedient remains untried of bringing this long pending controversy to a conclusion.

The committee will, therefore, proceed to consider the question under this two-fold aspect. And, first, in regard to our title.

This title depends altogether upon the correct construction of the definitive treaty of peace between the United States and his Britannic Majesty, concluded at Paris on the third day of September, one thousand seven hundred and eighty-three.

By the first article of this treaty, "his Britannic Majesty acknowledges the said United States, viz: New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign, and independent States; that he treats with them as such; and, for himself, his heirs, and successors, relinquishes all claims to the Government, propriety, and territorial rights of the same, and every part thereof."

The United States had declared their independence almost seven years previous to the date of the treaty. They had maintained this declaration before the world; and the treaty is not only a solemn recognition of that independence by Great Britain, but an express acknowledgment that she treated with them as free, sovereign, and independent States. We were equals treating with an equal. Great Britain was not a superior assigning territory to an inferior. No superiority wa

claimed on the one side, or would have been acknowledged on the other. Great Britain then claimed no such prerogative as she now asserts, of assigning an appropriate boundary to the United States, as a new power, formerly under her dominion. The treaty must, therefore, be construed as a solemn agreement entered into by one sovereign and independent nation with another, equally sovereign and independent.

It was not necessary expressly to have prescribed the limits of the United States by the treaty. At its date, the boundaries of each of the thirteen States were well known. The first article acknowledged each of them to be sovereign and independent, and relinquished "all claim on the part of the British King to the Government, propriety, and territorial rights of the same, and every part thereof;" and this would have been sufficient.

The commissioners who framed the treaty were, however, not content with such a general recognition. Its second article proves their desire to prescribe the limits of our boundary in a manner so precise and specific, as forever to prevent all disputes upon the subject. This second article is as follows :

ART. 2. "*And that all disputes which might arise in future, on the subject of the boundaries of the said United States, may be prevented,* it is hereby agreed and declared, that the following are, and shall be, their boundaries, viz : *from the northwest angle of Nova Scotia, viz : that angle which is formed by a line drawn due north from the source of St. Croix river to the highlands ; along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river,*" &c. It is unnecessary, here, to repeat any more of the treaty description.

In every delineation of territory, the all-important point is to fix the place of beginning with the greatest possible precision and certainty. To prevent all dispute thereafter, this was done by the commissioners. "The northwest angle of Nova Scotia" was a well known point. This can be clearly established by the most authentic official documents, which, it will conclusively appear, from the highest intrinsic evidence, were before the commissioners at the time they formed the treaty. It is true that this point had never been fixed by actual survey, nor had it been marked by the erection of any monument ; but that it could be found upon the ground at the intersection of two clearly defined lines was a mathematical truth, susceptible of demonstration. This north-

west angle of Nova Scotia, which was notorious, although the very spot had not been ascertained, was fixed upon as the place of beginning of our boundary, in order to prevent all future disputes; and yet, strange as it may appear, this is the very point now contested by the British Government. Whether with any good reason, it will be the task of the committee to inquire.

It is agreed by both parties that the map, called Mitchell's map, a copy of which is annexed to this report, was the one used by the commissioners at the formation of the treaty. It was published in 1755, and bears upon its face an official stamp; having been undertaken with the approbation and at the request of the Lords Commissioners for Trade and Plantations. Whoever may inspect this map will, at once, perceive the natural formation of that region. The river St. Lawrence runs from the southwest towards the northeast; whilst numerous tributaries rising in the highlands to the south of it, and, passing north through its valley, empty themselves into the main stream. These tributaries are all necessarily short; because the highlands from which they flow run at no great distance from the river, and in a parallel direction to it, throughout its whole course. From these highlands, on the south, proceed the head waters of the Connecticut, the Androscoggin, the Kennebeck, the Penobscot, the St. John, and the Ristigouche, all flowing into the Atlantic ocean, through different bays. And here it may be observed, that there is not a single stream, which rises on the south side of these highlands, throughout this whole region, which does not first empty itself into some Atlantic bay; not one of them flows directly into the main ocean. Such is the natural formation: Highlands running in a parallel direction with the St. Lawrence, and dividing the streams which fall into that river on the north, from those which seek the Atlantic ocean in the south. In 1755, when Mitchell's map was published, the British possessions in North America did not extend north of the St. Lawrence. At that period, it will appear from the map that the northwest angle of Nova Scotia was to be found on the St. Lawrence, at the point intersected by the line running due north from the source of the St. Croix. This north line is distinctly marked upon the map. On the west of it, the words "New England" are printed in large letters, and on the east "Nova Scotia."

If this map were, alone, to be the guide, and if the place of beginning of our boundary, mentioned in the treaty, had been simply "the northwest angle of Nova Scotia," without further qualification, the State of Maine would have extended to the St. Lawrence. In what

manner was this northwest angle of Nova Scotia brought as far south as the highlands separating the streams which flow in opposite directions to the St. Lawrence and to the Atlantic? In February, 1763, Great Britain acquired Canada from France by treaty. Canada, New England, and Nova Scotia being then all subject to the British Crown, the King thought proper, in creating the province of Quebec, to extend its limits south of the St. Lawrence, so as to include the valley of that river. The reasons were obvious. Quebec, the seat of Government, was situate on its northern shore. It was one of the most important cities in North America, and the trade and business of the people along the numerous streams which flowed into the St. Lawrence from the highlands south of it, would naturally centre there. Besides, it was obviously convenient that the limits of the different provinces should be regulated, as far as practicable, by the course of the rivers; and it would have been highly inconvenient that the valley south of the St. Lawrence, within sight of the capital of the province of Quebec, and necessarily having constant intercourse with the opposite shore, should continue attached to remote and distant Governments. The King, therefore, by his proclamation, dated on the 7th of October, 1763, declared that the Government of Quebec should be bounded, south of the St. Lawrence, by a line crossing that river and the Lake Champlain, in forty-five degrees of north latitude, and passing "along the highlands which divide the rivers that empty themselves into the said river St. Lawrence, from those which fall into the sea, and also along the north coast of the Bay des Chaleurs and the coast of the Gulf of St. Lawrence, to Cape Rosiers." Thus the province of Quebec was extended south, so as to include the vale of the St. Lawrence, and its southern line was fixed along the highlands from whence its tributaries flowed. New England and Nova Scotia were deprived of thus much of their former territory; but they still retained all that portion of it watered by streams whose sources were on the south side of these highlands, and which emptied themselves into the sea. This was a natural and proper division. After the date of this proclamation, where was "the northwest angle of Nova Scotia" to be found? Can doubt or difficulty rest upon this question? We must look for it on the line running north from the source of the St. Croix, at the point where this line intersects the southern line of the province of Quebec, "running along the highlands which divide the rivers that empty themselves into the said river St. Lawrence, from those which fall into the sea. This point is, and necessarily must be, the northwest angle of Nova

Scotia. It is demonstration itself. To run these two well described lines upon the face of the earth, is to ascertain that angle. The commissioners, therefore, who formed the treaty, well and wisely placed the beginning of our boundary at a point which could be rendered absolutely certain, by merely running these two lines. Those, who choose to examine Mitchell's map, will find that the due north line marked upon it from the source of the St. Croix, crosses the southern line of the province of Quebec, in these dividing highlands, about the forty-eighth degree of north latitude.

But the British Government deemed it proper to fix the boundaries of the province of Quebec, even with more solemnity than by royal proclamation. This was done by an act of Parliament passed in the year 1774, "for making more effectual provision for the Government of the province of Quebec, in North America." By this act, the separating boundary between that province on the north, and Nova Scotia and New England on the south, was still more clearly and distinctly defined than it had been in the proclamation.

The following language is employed, to wit: "bounded on the south by a line from the bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the sea, to a point in forty-five degrees of northern latitude on the eastern bank of the river Connecticut." In both the proclamation, and the act of Parliament, the dividing highlands are described in the very same language. "The highlands which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the sea." The termini of this boundary are more precisely fixed by the act of Parliament than by the proclamation. This act makes the southern point of the line commence on the eastern bank of the river Connecticut, in latitude forty-five, and terminate at the Bay of Chaleurs. Its extremities are two well known natural objects. This bay is in latitude about forty-eight. The act of Parliament seems to have been prepared with great deliberation. It was intended to fix the boundaries between vast provinces of the same empire; and no act of legislation demands greater care and attention. The Bay of Chaleurs on the north, in latitude forty-eight, and a portion on the Connecticut, in latitude forty-five at the south, were to be the two extremities; and the intermediate line was to pass along the highlands running between these two points, which divide the rivers that empty themselves into the St. Lawrence on the one side, from those falling into the sea upon the other. After this

act of Parliament, is it possible to conceive of a more extraordinary pretension, than it would have been in the Government of Quebec to have claimed jurisdiction, not only to these dividing highlands whence streams flow into the St. Lawrence, but a hundred miles south and east of them, embracing a region of country watered by a large river, the St. John, and its numerous tributaries flowing into the sea? Such a claim would have broken down the barriers between these provinces, erected with so much care by the act of Parliament, and made rivers running north into the St. Lawrence, mean the same thing as rivers running south into the ocean. And yet the present attempt of the British Government to make Mars hill the northwest angle of Nova Scotia rests upon no other or better principle, as will be shown hereafter.

The commissions of the different Governors of Quebec, in describing the boundaries of their jurisdiction, followed the language of the proclamation of 1763, until after the passage of the act of Parliament in 1774. The first commission which subsequently issued was to Guy Carlton, Esq., in the same year, and it adopts the language of that act. The southern limits of his jurisdiction are described in its language "to be a line from the bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude, on the eastern bank of the river Connecticut." Thus this province had for its southern boundary highlands dividing streams running in opposite directions between a bay, and a fixed point on a river. Was ever boundary better defined?

It would be a waste of time to recite the numerous commissions which have issued to the Governors of Quebec, of Nova Scotia, and, after this province was divided, in 1784, of New Brunswick; all speaking the same language. The western limit of Nova Scotia, and afterwards of New Brunswick, is uniformly described to run from that point where a line drawn due north from the source of the river St. Croix would intersect the southern boundary of Quebec, and from thence "to the northward by the said boundary as far as the western extremity of the Bay des Chaleurs." These commissions place the natural construction upon one expression, which, in the act of Parliament, at first view, might appear vague. In it the Bay of Chaleurs is mentioned generally, without a special reference to any particular part of it, though from the whole context the evident meaning was, the western extremity of that bay. The commissions to the Governors of Nova

Scotia, and afterwards New Brunswick, render this certain, by specifying "the western extremity of the Bay des Chaleurs."

Enough has already been shown to fix with precision what was the acknowledged southern boundary of the province of Quebec, at the date of the treaty in 1783, and what it has remained ever since. It was then clearly known to have been a line from the western extremity of the Bay of Chaleurs, to a point on the eastern bank of the Connecticut, in latitude forty-five, and running along the highlands dividing the tributaries of the St. Lawrence, from the sources of streams flowing into the sea. Where, then, was the northwest angle of Nova Scotia, known to be at the date of the treaty?

Without going back to the creation of this province, in 1621, by James the First, which the committee deem unnecessary, though it would add strength to the argument, they will content themselves with a reference to the first commission which was issued to the Governor of Nova Scotia, after the date of the proclamation of 1763. Before the proclamation, this province, as well as New England, had extended north to the St. Lawrence. After its date, it was necessary to make the commissions of the Governors correspond with the extension of the province of Quebec south of that river. Accordingly, the royal commission to Montague Wilmot, Esq. bearing date on the 21st November, 1763, limits and restrains the province of Nova Scotia, thus: "*To the northward our said province shall be bounded by the southern boundary of our province of Quebec as far as the western extremity of the Bay des Chaleurs;*" and again, to the westward "it shall be bounded by a line drawn from Cape Sable, across the entrance of the Bay of Fundy, to the mouth of the river St. Croix, *by the said river to its source, and by a line drawn due north from thence to the southern boundary of our colony of Quebec.*" The next commission, which issued to Lord William Campbell on the 11th August, 1765, changes this description only by commencing with the western instead of the northern line, thus: "On the westward by a line drawn from Cape Sable across the entrance of the Bay of Fundy, to the mouth of the river St. Croix, *by the said river to its source, and by a line drawn due north from thence to the southern boundary of our colony of Quebec, to the northward by the said boundary as far as the western extremity of the Bay des Chaleurs.*" In every commission which has issued since to all the Governors of Nova Scotia, and afterwards of New Brunswick, the same identical language has been used. On the 29th day of July, 1782, but four months previous to the conclusion of the provis-

ional treaty of peace with Great Britain, the commission granted to Governor Parr, describes the limits of Nova Scotia in precisely the same manner. And here it may be proper to observe, that the St. Croix has since been ascertained by a joint commission of the two Governments, and a monument has been erected at its source.

Were not, then, the commissioners who framed the treaty fully justified in the conviction, that when they established the point of beginning of the boundaries between the United States and Great Britain, at "the northwest angle of Nova Scotia," they were fixing it at a point long known and well established? To render assurance doubly certain, however, they describe where it is, in the very language which had been uniformly used by the British Government in proclamations, in acts of Parliament, and in numerous commissions to the Governors of Quebec and Nova Scotia. "The northwest angle of Nova Scotia," says the treaty, "is that angle which is formed by a line drawn due north from the source of St. Croix river to the highlands." To what highlands? The treaty answers, "the highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean." The northwest angle of Nova Scotia, then, is to be found in these highlands, at the point where the dividing due north line between New England and Nova Scotia, which commences at the source of the St. Croix, meets the southern boundary of the province of Quebec. The act of Parliament of 1774, was doubtless before the commissioners. They use its very language in the treaty. "Along the highlands which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the sea." The only change of this language in the treaty is, that "the Atlantic ocean," is substituted for "the sea." Both are evidently intended to convey the same meaning. The solicitude of the commissioners to preserve this highland boundary throughout between the two nations is manifest. Under the act of Parliament, the southern extremity of this line is described to be "a point in forty-five degrees of northern latitude, on the eastern bank of the river Connecticut." In the treaty it is "the northwesternmost head of Connecticut river." From thence the treaty line runs "down along the middle of that river, to the forty-fifth degree of north latitude."

Thus the British Government surrendered that small portion of the province of Quebec between the northwesternmost head of Connecticut river and the forty-fifth degree of north latitude, in order to have a continuous highland boundary from the northwest angle of Nova



Scotia, to the source of the northwesternmost head of the Connecticut. To accomplish this object, a part of what had been taken from New England, when the province of Quebec was established, in 1763, has been restored by the treaty. The great purpose was, that the entire line should consist of the highlands "which," in the language of the treaty and the act of Parliament, "divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the sea" or "the Atlantic ocean."

The committee will now proceed to show what was the construction placed upon this treaty fifteen years after its ratification, by solemn official declarations of high and responsible agents of the British Government.

To render it more manifest that these declarations are wholly inconsistent with the present claim of Great Britain, it will be necessary first to show precisely the extent of that claim. It comprehends all that portion of the State of Maine which lies north of the red line marked upon the map No. 2, annexed to this report, and embraces about one-third of its whole territory. This red line leaves the due north line from the source of the St. Croix, at the distance of forty miles from the monument there erected, and one hundred miles south of the north-west angle of Nova Scotia, marked A; and thence passes to the westward, not along highlands which divide the rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic ocean, according to the terms of the treaty, but along highlands dividing the rivers which flow into the St. John from those which fall into the Atlantic. These highlands are far south of the St. John; and if the British claim could be established, the whole of that river, from its source to its mouth, with all its branches, would be within British territory. Now, if it can be demonstrated that agents of high character, acting under the express authority of the British Government, several years after the date of the treaty, have expressly admitted, in their official arguments and correspondence, that this north line from the source of the St. Croix, not only crosses the St. John, but runs as far north as the streams emptying into the Bay of Chaleurs, what ought to be thought of this recent pretension?

A short time after the conclusion of the treaty a question arose between the two Governments what river was intended by the St. Croix of the treaty. In order to determine this question, commissioners were appointed under the fifth article of the treaty of November, 1794, commonly called Jay's treaty. Ward Chipman, Esq., the agent of the

British Government, contended that the true source of the St. Croix was at the head of the Scoudiac lakes, at the point marked W on the second map. In his argument in 1797, to establish this position, and to defeat the position taken by the United States, he expressly admits that "this north line [from the source of the St. Croix to the treaty highlands] must of necessity cross the river St. John." Admitting this fact, his leading purpose seems to have been to remove this line as far west as he could, so that it might cross the St. John at as great a distance from its mouth as possible, and thus embrace as much of its course as was attainable within British territory. In prosecuting his argument, he says, "but if a north line is traced from the source of the Cheputnatecook, (as insisted upon by the United States,) *it will not only cross the river St. John, within about fifty miles from Fredericton, the metropolis of New Brunswick, but will cut off the sources of the rivers which fall into the Bay of Chaleurs, if not of many others, probably the Mirramichi among them, which fall in the Gulf of St. Lawrence.*" Thus it appears that, in 1797, the British Government had never thought of contending that the highlands of the treaty were to be found south of the St. John, or even south of the sources of the streams which empty into the Bay of Chaleurs.

Robert Liston, Esq., at the time of these proceedings, was his Britannic Majesty's minister to the United States. He was consulted by Mr. Chipman on the propriety of acceding to a proposition made to him by the agent of the United States. This proposition need not be stated. Mr. Liston in his reply, dated at Providence, on the 23d October, 1798, advises Mr. Chipman to accede to the proposition, because "it would give an addition of territory to the province of New Brunswick, *together with a greater extent of navigation on St. John's river.*" The British Government now claim the whole river, and all its tributaries, from its source to its mouth.

The Committee might here enumerate, if they deemed it necessary, the numerous maps of this region which were published in England, between the proclamation of 1763 and the treaty of 1783, and subsequently until after the treaty of Ghent in 1814, embracing a period of more than half a century; in all of which, without a single exception known to the Committee, the western line of the province of Nova Scotia, afterwards New Brunswick, crosses the river St. John, and the northwestern angle of Nova Scotia is placed north of that river.

Previous to the treaty of Ghent, the British Government had become convinced of the great importance of having a direct communication,

within their own territory, between their provinces of Nova Scotia and New Brunswick, and the city of Quebec. It will be seen from an inspection of the map No. 2, that the territory of the State of Maine, now in dispute, intercepts this communication. It was one object of the British commissioners at Ghent, to obtain a cession of this territory. They did indeed make a faint and feeble suggestion that our title was doubtful; but this was not seriously urged. As the occasion was solemn and the object one of great importance, can any person suppose that if they had even entertained doubts where "the northwest angle of Nova Scotia," was to be found, they would not then have earnestly insisted on the pretension which they now so seriously maintain? From the date of the treaty of 1783, until the conferences at Ghent in 1814, during a period of more than thirty years, our title was unquestioned, as it still remains unquestionable.

In a protocol of August 8, 1814, the British commissioners stated the following as one among other subjects, upon which, it appeared to them, that the discussions between themselves and the American commissioners would be likely to turn: "A revision of the boundary line between the British and American territories, with a view to prevent future uncertainty and dispute."

In a note of the British to the American commissioners of the same date, they specify more particularly what they mean by this general proposition; and in conclusion state, "If this can be adjusted, there will then remain for discussion the arrangement of the northwestern boundary between Lake Superior and the Mississippi; the free navigation of that river; and such a variation of the line of frontier as may secure a direct communication between Quebec and Halifax."

It will be perceived that they do not propose to ascertain and fix a line previously agreed upon, by the treaty of 1783, but to vary that line in such a manner as to secure a direct communication between Quebec and Halifax. This was in substance a proposition to obtain a cession of territory, and was so considered by the American commissioners. Accordingly, on the 24th August, 1814, they replied, that "*they had no authority to cede any part of the territory of the United States; and to no stipulation to that effect will they subscribe.*"

On the 4th September, 1814, the British commissioners observe, that they are unable to reconcile this declaration with the statement previously made by the American commissioners, "that they were instructed to treat for the revision of their boundary lines," "although

the proposal left it open to them [the American commissioners] *to demand an equivalent for such cession either in frontier or otherwise.*"

They then proceed to insinuate the first doubt in regard to our title, in the following language: "The American plenipotentiaries must be aware that the boundary of the district of Maine has never been correctly ascertained; that the one asserted at present, by the American Government, by which the direct communication between Halifax and Quebec becomes interrupted, was not in contemplation of the British plenipotentiaries, who concluded the treaty of 1783; and that the greater part of the territory in question is actually unoccupied.

"The undersigned are persuaded that an arrangement on this point might be easily made, if entered into with the spirit of conciliation, without any prejudice to the interests of the District in question."

This note contains the first intimation ever made by Great Britain of any doubt as to the title of the United States to the disputed territory. The British commissioners find endeavor to obtain it by cession; and, failing in this attempt, they intimate, rather than assert, a claim to it.

This faint pretension was promptly repelled by the American commissioners in their note of September 9, 1814; and it is due to them that the committee should present their views in their own language.

"With regard to the cession of a part of the District of Maine, as to which the British plenipotentiaries are unable to reconcile the objections made by the undersigned with their previous declaration, they have the honor to observe that at the conference of the 8th ult. the British plenipotentiaries stated as one of the subjects suitable for discussion, a revision of the boundary line between the British and American territories, with a view to prevent uncertainty and dispute; and that it was on the point thus stated, that the undersigned declared that they were provided with instructions from their Government; a declaration which did not imply that they were instructed to make any cession of territory in any quarter, or to agree to a revision of the line, or to any exchange of territory where no uncertainty or dispute existed. The undersigned perceive no uncertainty or matter of doubt in the treaty of 1783, with respect to that part of the boundary of the District of Maine which would be affected by the proposal of Great Britain on that subject. They never have understood that the British plenipotentiaries, who signed that treaty, had contemplated a boundary different from that fixed by the treaty, and which requires nothing more in order to be definitely ascertained, than to be surveyed in conformity with its provisions. This subject not having been a matter of uncertainty or

dispute, the undersigned are not instructed upon it; and they can have no authority to cede any part of the State of Massachusetts, even for what the British Government might consider a fair equivalent."

Three subsequent notes, one from the British commissioners, dated 10th September, 1814, an answer from the American commissioners of the 26th September, and a reply from the British commissioners dated 8th October, seem to have contained all the subsequent correspondence on this subject. In this last note, they declare that "the British Government never required that all that portion of the State of Massachusetts, intervening between the province of New Brunswick and Quebec, should be ceded to Great Britain; but only that small portion of unsettled country, which interrupts the communication between Quebec and Halifax, there being much doubt whether it does not already belong to Great Britain." Thus it appears that in 1814, Great Britain would gladly have accepted a small portion of the disputed territory, by cession, and granted an equivalent therefor, either in frontier or otherwise; and yet, strange as it may seem, her claim has since grown to such a magnitude, that she now demands the whole by right, under the treaty of 1783.

Our commissioners at Ghent, having successfully resisted every attempt for the dismemberment of Maine, agreed upon an article with the British commissioners, not to revise or to change the ancient treaty boundary, but to run and establish upon the ground that very boundary, without any alteration, and to ascertain "the northwest angle of Nova Scotia," its place of beginning. This article is the fifth in the treaty. Under it, each party appointed a commissioner. These commissioners disagreed. According to the treaty the question was then referred to the King of the Netherlands, as umpire, whose award was rejected by the United States, because it did not even profess to decide the controversy according to the terms of the submission, but proposed a compromise, by a division of the disputed territory between the parties. Great Britain has also since announced her abandonment of this award; and now, at the end of more than half a century, after the conclusion of the treaty of 1783, the question not only remains unsettled, but threatens to involve the two nations in a dangerous dispute.

The committee will now proceed to state the principles on which Great Britain rests her claim to the disputed territory, and to give them such an answer as in their judgment they merit. She contends, in the first place, that the northwest angle of Nova Scotia, mentioned in the treaty, is to be found at Mars hill, in the line due north from the mon-

ument at the source of the St. Croix, and forty miles distant from it, and that the highlands of the treaty are those running to the westward from that point, and dividing the sources of the streams flowing north into the St. John, and south into the Penobscot. A reference to map No. 2 will clearly show the extent of this claim.

Great Britain contends, in the second place, that, if this be not the true treaty line, it is impossible to find it; that, then, the description of the treaty would become void for uncertainty; and that no mode remains of terminating the controversy, but by abandoning the treaty altogether, and agreeing upon a conventional line.

The committee trust that a sufficient answer has already been given to this last proposition. They have endeavored, and they believe successfully, to prove that the northwest angle of Nova Scotia was a well-known point, capable of being easily ascertained, ever since the proclamation of 1763, by simply running a due north line from the source of the St. Croix, to intersect the southern line of the province of Quebec, which consists of the highlands running from the western extremity of the Bay of Chaleurs to the head of Connecticut river, and dividing those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean. It is certain as the laws of nature, that these highlands, from which we know that streams do flow in opposite directions, can be found on the face of the country.

In support of the first proposition, the Government of Great Britain contends that, as the eastern boundary of the United States runs "by a line to be drawn along the middle of the river St. Croix, *from its mouth in the Bay of Fundy*, to its source;" and as the St. John, though nowhere mentioned in the treaty, has its mouth also *in the Bay of Fundy*, that, therefore, the St. John is not a river which falls into the Atlantic ocean, according to the description of the treaty. They assert, therefore, that, in looking for the highlands of the treaty, you must search for highlands south of the St. John. This brings them far south to Mars hill; and from thence, westwardly, along the highlands, marked in map No. 2, to the western boundary of the State of Maine, where they first reach the highlands which, as they contend, "divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean." The whole argument of the British Government, it will be perceived, rests upon the assumption that the St. John is not a river falling into the Atlantic ocean; because it has its mouth in the Bay of Fundy.

Now, what are the objections to this extraordinary pretension, as the committee are constrained to call it?

And, first, what is the Bay of Fundy, if it be not a part of the Atlantic ocean? A bay is a mere opening of the main ocean into the land—a mere interruption of the uniformity of the seacoast by an indentation of water. These portions of the ocean have received the name of bays, solely to distinguish them from the remainder of the vast deep, to which they belong. Would it not be the merest special pleading to contend that the Bay of Naples was not a portion of the Mediterranean, or that the Bay of Biscay was not a part of the Atlantic ocean?

Again: the description of the treaty is, "rivers which fall into the Atlantic ocean." Can it be said, with any propriety, that a river does not fall into the Atlantic, because, in reaching the main ocean, it may pass through a bay? And yet this is the British argument. The Delaware does not fall into the Atlantic, because it flows into it through the Bay of Delaware; and, for the same reason, the St. John does not fall into the Atlantic, because it flows into it through the Bay of Fundy. The committee know not how to give a serious answer to such an argument. The bare statement of it is its best refutation.

But, like all such arguments, it proves too much. If it be correct, this portion of the treaty of 1783 is rendered absurd and suicidal; and the wise and distinguished statesmen, by whom it was framed, must be condemned by posterity, for affixing their names to an instrument, in this particular, at least, absolutely void. Although they believed they would prevent "all disputes which might arise, in future, on the subject of the boundaries of the United States," by fixing their commencement at "the northwest angle of Nova Scotia," and running from thence along "the highlands which divide those rivers which empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean," yet it is absolutely certain, that there was not a single river in that whole region of country which, according to the British construction, did fall into the Atlantic ocean. They all fall into bays, without one exception. Neither can we plead ignorance as an excuse for these commissioners; because it is fully in proof, that they had Mitchell's map before them, from which the fact clearly appears. The Ristigouche does not fall into the Atlantic, because it has its mouth in the Bay of Chaleurs; nor does the Penobscot because its mouth is in the Bay of Penobscot; nor do the Kennebeck and Androscoggin, because, after their junction, they fall into the Bay of Sagadahock. The

same is true, even of the Connecticut, because it empties itself into Long Island sound. All the rivers in that region are in the same condition with the St. John. Thus it appears, if the British argument be well founded, that the commissioners have concluded a treaty, and described highlands, whence streams proceed falling into the Atlantic, as a portion of the boundary of the United States, when, from the very face of the map before them, it is apparent no such streams exist.

There is another objection to the British claim, which is conclusive. Wherever the highlands of the treaty exist, they must be highlands from which on the north side streams proceed falling into the St. Lawrence. This portion of the description is as essential as that from their south side streams should issue falling into the Atlantic. Now the British claim abandons the former part of the description altogether. Their line of highlands commencing at Mars hill is at least a hundred miles south of the highlands whence the tributaries of the St. Lawrence flow. Between these highlands and those claimed by the British Government the broad valley of the St. John spreads itself, watered by the river of that name, and the streams which empty into it from the north and from the south. The two points on the western line of New Brunswick are distant from each other more than a hundred miles; and when you arrive at the British highlands, you find that they divide the sources of the St. John and the Penobscot, and not the sources of streams falling into the St. Lawrence and the Atlantic ocean, according to the description of the treaty.

But, even suppose it were possible to prove that neither the St. John nor any other river in that region falls into the Atlantic ocean, would this fact essentially benefit the British Government? If this portion of the description should entirely fail, would it render the other portion void? Certainly not. It might be said that the commissioners were mistaken as to where the streams emptied themselves which flowed from the southern side of the treaty highlands; as to the existence of these highlands, there could be no mistake. They are the boundary and the streams flowing from them are mere matters of description. Can they be sufficiently identified, independently of this mistake? If they can, the question is settled. Now, fortunately on this subject, no doubt can exist. Two circumstances concur to identify them, about which it is not possible there can be a mistake. According to the act of Parliament of 1774, they constitute the southern line of the province of Quebec, between the western extremity of the Bay of Chaleurs, in latitude 48, and the eastern bank of the Connecticut river, in



latitude 45; and it is equally certain that from them, all along in regular succession, streams proceed falling into the St. Lawrence. A mistake in one part of a description of boundary, has never been held to vitiate the whole, provided sufficient remains clearly to designate the intention of the parties.

But how is it possible ever to embrace Mars hill in the line of highlands running from the western extremity of the Bay of Chaleurs and forming the southern boundary of the province of Quebec? It is clear that in this, and in this alone, the northwestern angle of Nova Scotia is to be found. Mars hill is one hundred miles directly south of this line. You cannot, by any possibility, embrace that hill in this range; unless you can prove that a hill in latitude  $46\frac{1}{2}$  is part of a ridge directly north of it in latitude 48; and this, notwithstanding the whole valley of the St. John, from its southern to its northern extremity, intervenes between the two. The thing is impossible. Mars hill can never be made, by any human ingenuity, the northwest angle of Nova Scotia.

Particular emphasis has been placed by the British Government on the word "highlands," mentioned in the treaty; and comparisons have been made between the height of Mars hill and that of different parts of the highlands which divide the streams of the St. Lawrence from those of the Atlantic. Even in this they have failed; because it has been shown that the summits of the more elevated portions of the treaty highlands are considerably above that of Mars hill, the highest point on the ridge claimed by Great Britain. The committee, however, deem such a question to be wholly immaterial. When highlands are spoken of as dividing waters flowing in different directions, the meaning is plain. From the very nature of things, they must exist and slope off in opposite directions; but whether they consist of table land, of mountains, or even of swamp, still if there be a height of land, from which streams flow down in different directions, this is sufficient. It is not their elevation, but their capacity to divide, which gives them their character.

It is strange that the mere incidental mention of the Bay of Fundy in the treaty, though not at all in connexion with the St. John, which is not even named, should have been the foundation of the whole superstructure of the British argument. The reason why it was mentioned at all is obvious. It was palpably not for the purpose of creating a third class of rivers flowing into that bay, distinct from those flowing into the St. Lawrence and the Atlantic, as the British Government con-

tend ; but merely for the purpose of specifying with greater precision the commencement of the eastern boundary of the United States. Several rivers in that portion of the country had borne the name of St. Croix ; from the fact that the early French navigators, actuated by motives of piety, had planted a cross at their mouth when they were first discovered. Hence it was necessary, in specifying the beginning of our eastern boundary, to state that it was in the middle of that St. Croix which had its mouth in the *Bay of Fundy*. Notwithstanding this description, it has been seen, that which was the true St. Croix, became a subject of dispute between the two Governments. Still both parties were prevented from claiming that any river which did not flow into that bay was the St. Croix of the treaty.

The Bay of Fundy has been twice mentioned in the treaty. After starting at the northwest angle of Nova Scotia, and from thence sweeping round the boundaries of the United States to this bay, it was necessary to fix as precisely as possible the point at which our eastern boundary commenced. This was essential for a double purpose. In the first place it was the extreme northern point from which a line was to be run due east twenty leagues into the ocean, according to the treaty ; within which space the United States were entitled to all the islands along their coast, except such as were within the limits of Nova Scotia ; and, in the second place, it was the point from which our eastern line was to commence, and to run to the northwest angle of Nova Scotia.

Had the commissioners omitted to fix this point with as great precision as they could, they would have been guilty of culpable neglect. Having done so, and having mentioned the Bay of Fundy as that part of the ocean in which the St. Croix has its mouth, the British Government have used it, not merely as it was intended, to mark the eastern boundary of the United States, but to render the whole treaty, so far as the northeastern boundary is concerned, absurd, uncertain, and void. Surely the commissioners never could have foreseen any such result. The language of this portion of the treaty is as follows :

“ East by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source, directly north to the aforesaid highlands, which divide the rivers that fall into the Atlantic ocean from those which fall into the river St. Lawrence, comprehending all islands within twenty leagues of any part

of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic ocean; excepting such islands as now are or heretofore have been within the limits of the said province of Nova Scotia."

Upon the whole, the Committee do not entertain a doubt of the title of the United States to the whole of the disputed territory. They go further, and state that if the General Government be not both able and willing to protect the territory of each State inviolate, then it will have proved itself incapable of performing one of its first and highest duties. They feel an abiding reliance, however, in the inherent sense of justice of the British Government. As soon as that Government shall become convinced that the disputed territory belongs to the United States, which they persuade themselves will be the case at no distant day, impelled by a desire of preserving inviolate the faith of treaties, it will hasten to relinquish its pretensions. In that event, the Committee entertain not a doubt but that this long contested and dangerous question may be settled to the mutual satisfaction of both Governments.

The Committee will now proceed to make a very few observations on the second question proposed for discussion, which was, Does no other and more friendly expedient remain untried of bringing this long pending controversy to a conclusion, then the passage of the bill which has been referred to them by the Senate? They are most happy to be able to answer this question in the affirmative. Anxious as they are to cultivate, by every honorable means in their power, the most friendly relations with Great Britain, it affords them sincere pleasure, that the existing state of the negotiations between the two countries will justify them in forbearing to recommend the adoption of any measure on the subject by the Senate at its present session. Negotiation has not yet been exhausted. Although the Committee are firmly convinced that the title of the United States to the territory in dispute is clear and unquestionable; although they acknowledge that the State of Maine has just reason to complain not only of the long and vexatious delay which has been experienced in settling this question, but of the assumption of actual jurisdiction by Great Britain over a portion of her territory, under circumstances well calculated, in

some instances at least, to excite her sensibility, yet, from the known justice of that power, they still entertain a confident hope that the pending negotiation may be productive of the most happy results. The important preliminaries of a convention between the two Governments, for the purpose of exploring and surveying the disputed lines of the treaty boundary have already been adjusted. In this state of the question, it seems to them not advisable to withdraw the subject from the Executive, to which it more properly belongs, and direct the boundaries to be surveyed, the lines to be marked, and monuments to be erected thereon, under the authority of Congress. In their opinion, therefore, the bill referred to them, "to provide for surveying the northeastern boundary line of the United States, according to the provisions of the treaty of peace of seventeen hundred and eighty-three," ought not to pass.

Entertaining this view of the whole subject, the Committee unanimously recommend to the Senate the adoption of the following resolutions :

*Resolved*, That after a careful examination, and deliberate consideration of the whole controversy between the United States and Great Britain, relative to the northeastern boundary of the former, the Senate does not entertain a doubt of the entire practicability of running and marking that boundary, in strict conformity with the stipulations of the definitive treaty of peace of seventeen hundred and eighty-three; and it entertains a perfect conviction of the justice and validity of the title of the United States to the full extent of all the territory in dispute between the two powers.

*Resolved, further*, That, considering that more than half a century has elapsed since the conclusion of that treaty; considering the extraordinary delay which has hitherto marked the negotiations and proceedings of the Governments of the two countries in their endeavor amicably to settle the controversy; and considering the danger of mutual irritation and collisions upon the borders of the kindred and friendly nations, from further procrastination, the Senate cannot forbear to express an earnest desire that the pending negotiation should be brought to a close, and the final decision of the dispute made, as early as practicable.

*Resolved*, That as it would be inexpedient for the United States to proceed, upon their separate authority, to survey and mark the north-

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eastern boundary, until all reasonable means of effecting that object by the consent and concurrence of both parties shall have been exhausted, the "bill to provide for surveying the northeastern boundary line of the United States, according to the provisions of the treaty of peace of seventeen hundred and eighty-three," ought not to pass, and it is, therefore, ordered that it be laid upon the table.

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